



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Bob Wieckowski, Vice Mayor  
Anu Natarajan  
Bill Harrison  
Suzanne Lee Chan

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Annabell Holland, Interim Assistant City  
Manager/Parks & Recreation Director  
  
Dawn G. Abrahamson, City Clerk  
Robert Beyer, Interim Community Dev. Director  
Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Mary Kaye Fisher, Interim Human Resources Dir.  
Norm Hughes, City Engineer  
Bruce Martin, Fire Chief  
Jim Pierson, Transportation & Ops Director  
Jeff Schwob, Planning Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Lori Taylor, Economic Development Director  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

**CLOSED SESSION  
NOTICE AND AGENDA OF SPECIAL MEETING  
  
CITY OF FREMONT**

**DATE:** Tuesday, November 9, 2010

**TIME:** 6:00 p.m.

**LOCATION:** Fremont Room, 3300 Capitol Avenue, Fremont

The City will convene a special meeting. It is anticipated the City will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding existing litigation in one matter, as follows:

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

This Closed Session is authorized by subdivision (a) of Section 54956.9 of the Government Code and will pertain to existing litigation in one matter.

John Freeman v. City of Fremont, Case No. RG10541529

This Special Meeting is being called by Mayor Wasserman.



**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**NOVEMBER 9, 2010**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Special and Regular Meetings of October 26, 2010*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Generally Located Northeast of the Intersection of Paseo Padre Parkway and Ardenwood Boulevard ("Patterson Ranch") in the Northern Plains Planning Area From "Agriculture" and "Agriculture Flood Combining District A," to Planned District "P-2005-00186" and Planned District Flood Combining District (P-2005-00186(F))"*

*RECOMMENDATION: Adopt ordinance.*

- 2.4 *Second Reading and Adoption of an Ordinance of the City of Fremont Adopting Development Agreement (DA-PLN2005-00186) Between the City and Patag, a California Limited Partnership with the General Partner, PFM, Inc., Related to the Development of Property Generally Located at the Northeast Quadrant of the Ardenwood Boulevard and Paseo Padre Parkway Intersection in the Northern Plain Planning Area*

*RECOMMENDATION: Adopt ordinance.*

2.5 *TASK ORDER NO. 6 TO FUSD JOINT POWERS AGREEMENT*

*Approval of Task Order No. 6 to the Joint Powers Agreement with Fremont Unified School District for the Provision of School-site Services in FY 2010/11*

*Contact Person:*

<i>Name:</i>	<i>Iris Preece</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Youth &amp; Family Services Administrator</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2128</i>	<i>510-571-2051</i>
<i>E-Mail:</i>	<i>ipreece@fremont.gov</i>	<i>sshensfil@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or designee to execute Task Order No. 6 to the existing joint powers agreement with Fremont Unified School District for the Youth and Family Services and Fremont Family Resource Center divisions of the Human Services Department to provide mental health services, case management and parenting support services in FY 2010/11 in the amount of \$108,024.*

2.6 *ALAMEDA COUNTY BEHAVIORAL HEALTH CARE SERVICES CONTRACT RENEWAL*

*Approval of Contract Renewal with Alameda County Behavioral Health Care Services (ACBHCS) for Reimbursement of Mental Health Services FY 2010/11*

*Contact Person:*

<i>Name:</i>	<i>Iris Preece</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Youth &amp; Family Services Administrator</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2128</i>	<i>510-574-2051</i>
<i>E-Mail:</i>	<i>ipreece@fremont.gov</i>	<i>sshensfil@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or designee to execute the transition and contracts with Alameda County Behavioral Health Care Services for reimbursement for mental health services as set forth in the staff report.*

2.7 *ALAMEDA COUNTY PROBATION CONTRACT RENEWAL*

*Approve FY 2010/11 Contract Renewal with Alameda County Probation Department for Programs Supporting At-Risk Youth and Families*

*Contact Person:*

<i>Name:</i>	<i>Iris Preece</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Youth &amp; Family Services Administrator</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2128</i>	<i>510-574-2051</i>
<i>E-Mail:</i>	<i>ipreece@fremont.gov</i>	<i>sshensfil@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or designee to execute a contract totaling \$307,698 with the Alameda County Probation Department to provide*

*delinquency prevention and early intervention programs for at-risk youth and families in Fremont and Newark.*

**2.8 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT DESIGN AGREEMENT AMENDMENT**

*Approval of the Seventh Amendment to the Professional Services Agreement with URS Corporation for Additional Design Services During Construction for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project*

**Contact Person:**

<b>Name:</b>	<i>Afshin Abtahi</i>	<i>Jim Pierson</i>
<b>Title:</b>	<i>Project Manager</i>	<i>Director</i>
<b>Dept.:</b>	<i>Transportation and Operations</i>	<i>Transportation and Operations</i>
<b>Phone:</b>	<i>510-494-4724</i>	<i>510-494-4722</i>
<b>E-Mail:</b>	<i>aabtahi@fremont.gov</i>	<i>jpierson@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or his designee to execute Amendment No. 7 to the Washington Boulevard/Paseo Padre Parkway Grade Separation Project Professional Services Agreement with URS Corporation in an amount not to exceed \$10,000 and further authorize the City Manager or his designee to increase this amount up to \$10,000 if additional services are required.*

**3. CEREMONIAL ITEMS**

- 3.1 Presentation by League of California Cities Staff for 2010 Helen Putnam Award for Excellence Winning Entry in the Public Works, Infrastructure and Transportation Category
- 3.2 Presentation of ACEC Engineering Excellence Award for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project by URS Corporation
- 3.3 Resolution: One Book; One Community Reading Program
- 3.4 Proclamation: Make A Difference Day

**4. PUBLIC COMMUNICATIONS**

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

## 5. SCHEDULED ITEMS

### 5.1 JAI PROPERTY CONVERSION APPEAL – 4004 MATTOS DRIVE

Continuation of a Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Decision to Deny a Conditional Use Permit to Allow the Conversion of an Existing Residential Structure to a Commercial Structure in the Administrative Commercial (C-O) Zoning District (PLN2008-00223) (Continued from September 14, 2010)

Contact Person:

Name:	Stephen Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
E-Mail:	skowalski@fremont.gov	jschwob@fremont.gov

RECOMMENDATION:

1. Hold public hearing;
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15303, Conversions of Minor Structures;
3. Find that the project is in conformance with the relevant provisions contained in the City of Fremont General Plan. These provisions include the designations, goals, objectives and policies set forth in the Land Use Element of the General Plan as enumerated within the staff report; and
4. Reverse the Planning Commission's decision and approve the project as shown in Exhibit "A", based on the findings and subject to the conditions contained in Exhibit "B".



**6. REPORT FROM CITY ATTORNEY**

6.1 Report Out from Closed Session of Any Final Action

**7. OTHER BUSINESS – None.**

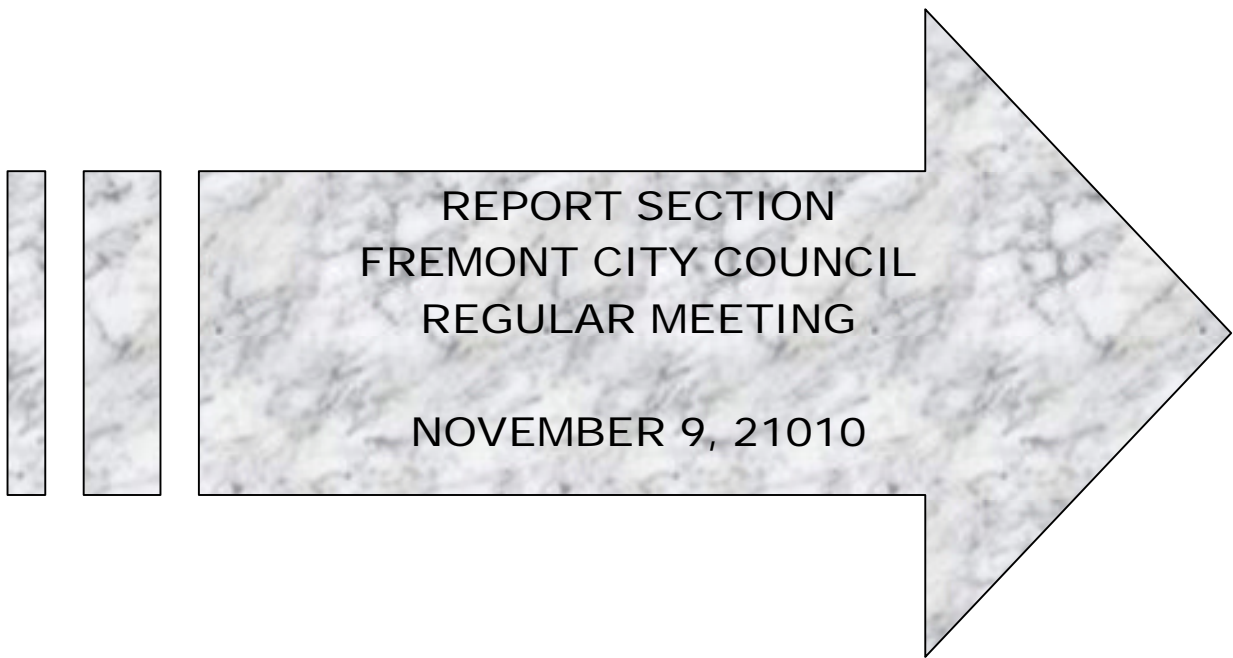
**8. COUNCIL COMMUNICATIONS**

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

**9. ADJOURNMENT**





REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING

NOVEMBER 9, 21010



- \*2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Generally Located Northeast of the Intersection of Paseo Padre Parkway and Ardenwood Boulevard (“Patterson Ranch”) in the Northern Plains Planning Area From “Agriculture” and “Agriculture Flood Combining District A,” to Planned District “P-2005-00186” and Planned District Flood Combining District (P-2005-00186(F))”**

**ENCLOSURE:** [Draft Ordinance](#)

**RECOMMENDATION:** Adopt ordinance.

- \*2.4 Second Reading and Adoption of an Ordinance of the City of Fremont Adopting Development Agreement (DA-PLN2005-00186) Between the City and Patag, a California Limited Partnership with the General Partner, PFM, Inc., Related to the Development of Property Generally Located at the Northeast Quadrant of the Ardenwood Boulevard and Paseo Padre Parkway Intersection in the Northern Plain Planning Area**

**ENCLOSURE:** [Draft Ordinance](#)

**RECOMMENDATION:** Adopt ordinance.

## **\*2.5 TASK ORDER NO. 6 TO FUSD JOINT POWERS AGREEMENT**

### **Approval of Task Order No. 6 to the Joint Powers Agreement with Fremont Unified School District for the Provision of School-site Services in FY 2010/11**

#### **Contact Person:**

Name:	Iris Preece	Suzanne Shenfil
Title:	Youth & Family Services Administrator	Director
Dept.:	Human Services	Human Services
Phone:	510-574-2128	510-571-2051
E-Mail:	ipreece@fremont.gov	sshenfil@fremont.gov

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**Executive Summary:** The purpose of this report is to recommend that Council authorize the City Manager or designee to execute Task Order No. 6 to the existing joint powers agreement with Fremont Unified School District for the Youth and Family Services and Fremont Family Resource Center divisions of the Human Services Department to provide mental health, case management and parenting support services in FY 2010/11 in the amount of \$108,024.

**BACKGROUND:** The Youth and Family Services (YFS) Division of the Human Services Department (HSD) has provided counseling services and parenting education to FUSD for many years. The largest program, Healthy Choices school-site counseling program, provides counseling services at 20 Fremont school sites to approximately 450 children a year by utilizing volunteer clinical interns or trainees in the process of completing their required supervised practice hours to work at schools. In addition, a YFS staff counselor has been assigned to work at the Robertson High School campus four days per week.

For Healthy Choices, school-sites pay an annual fee that covers the costs associated with the recruitment, training and supervision of the clinical interns. In a few instances, the District utilizes State funds available through the Safe and Drug Free Schools program to support Healthy Choices school-site counseling. The total for FY 2010/11 Healthy Choices fees will be a maximum of \$108,024.

In FY 2009/10, with financial support from Alameda County Health Care Services Agency, HSD has been able to strengthen school-site service coordination and add case management for families by arranging for an FRC staff Case Manager, two social work interns and a YFS staff counselor to work in the schools that make up the Kennedy attendance area.

In addition, with funding through First 5 Alameda County, staff from the Infant Toddler Program are partnering with FUSD Preschool Program staff to conduct the Preschool Parent Academy. This is a seven-week parent education course taught in English and Spanish in the fall, winter and spring.

All of these services would be incorporated into Task Order No. 6 to the existing joint powers agreement with FUSD. The agreement does not create a separate legal entity.

**DISCUSSION/ANALYSIS:** National research shows that school-site mental health services and family support promotes school success, improves school climate and reduces juvenile crime. Alameda County Health Care Services has now joined with the City and FUSD to support school-site services and to

document the benefits for students and families through a program evaluation that is being carried out by the University of San Francisco.

**FISCAL IMPACT:** Funding for the staff, supplies and other costs for the services included in this Task Order No. 6 are supported through the Healthy Choices fees, Medi-Cal reimbursement, and the grants from Alameda County Health Services, and First 5 Alameda County. Council appropriated fees expected under this Task Order as part of the adopted FY 2009/10 budget.

**ENVIRONMENTAL REVIEW:** None

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or designee to execute Task Order No. 6 to the existing joint powers agreement with Fremont Unified School District for the Youth and Family Services and Fremont Family Resource Center divisions of the Human Services Department to provide mental health services, case management and parenting support services in FY 2010/11 in the amount of \$108,024.

**\*2.6 ALAMEDA COUNTY BEHAVIORAL HEALTH CARE SERVICES CONTRACT RENEWAL**

**Approval of Contract Renewal with Alameda County Behavioral Health Care Services (ACBHCS) for Reimbursement of Mental Health Services FY 2010/11**

**Contact Person:**

Name:	Iris Preece	Suzanne Shenfil
Title:	Youth & Family Services Administrator	Director
Dept.:	Human Services	Human Services
Phone:	510-574-2128	510-574-2051
E-Mail:	ipreece@fremont.gov	sshenfil@fremont.gov

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**Executive Summary:** The purpose of this report is to recommend that the City Council authorize the City Manager or his designee to execute the Interim Contract and the final (Services-As-Needed) Contract between the City and Alameda County Behavioral Health Care Services (ACBHCS) for reimbursement not to exceed \$723,426, for eligible mental health services provided by Youth and Family Services (YFS) in FY 2010/11.

**BACKGROUND:** The Youth and Family Services (YFS) Division of the Human Services Department has secured Medi-Cal reimbursement from ACBHCS for eligible mental health services provided to children and adults through its various programs since FY1999-2000. This contract with ACBHCS includes services provided to children with “full-scope Medi-Cal” (i.e., complete Medi-Cal coverage) that are funded through Early Periodic Screening Diagnosis and Treatment (EPSDT), which is the joint county, state, and federal Medicaid reimbursement mechanism for services provided to children. The funded programs include:

- Healthy Choices School-Site Counseling Services at 20 Fremont school sites including Robertson High School and the Newark Bridgepoint/Community Day School site;
- The Infant Toddler Program, which serves families with children who are five years old and younger;
- The Youth Service Center, which serves at-risk youth and their families; and
- The Truancy Intervention and Probation Youth Program, which serves youth who are chronically truant and/or on probation and their families.

**DISCUSSION/ANALYSIS:** The EPSDT program provides reimbursement for services funded based on actual costs up to the maximum allowed by the State of California, which requires the development of interim reimbursement rates and a final cost settlement each year. In order to avoid service interruptions, Alameda County utilizes a two-step contracting process. First, the County and the City execute an interim contract that allows the City to continue program operation and bill for eligible services provided using the prior year’s interim reimbursement rates. Once the FY 2010/11 interim reimbursement rates have been approved, the County will issue the new contract for FY 2010/11 that replaces the interim contract. Any differences between the contractor’s actual costs and the reimbursement paid are settled through the end-of-year cost settlement process.



**FINANCIAL IMPACT:** While the reimbursement rate may vary between the contract and cost settlement, the total maximum amount for which the City can be reimbursed remains at \$723,427. Funding is used for staffing, supplies and overhead costs. In anticipation of these funds, the City appropriated sufficient funds to cover the agreement as part of the FY 2010/11 Adopted Budget. Any additional funds provided by the County will also be included in the agreement, provided that such funds are properly appropriated.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or designee to execute the transition and contracts with Alameda County Behavioral Health Care Services for reimbursement for mental health services as set forth in the staff report.

## **\*2.7 ALAMEDA COUNTY PROBATION CONTRACT RENEWAL**

### **Approve FY 2010/11 Contract Renewal with Alameda County Probation Department for Programs Supporting At-Risk Youth and Families**

#### **Contact Person:**

Name:	Iris Preece	Suzanne Shenfil
Title:	Youth & Family Services Administrator	Director
Dept.:	Human Services	Human Services
Phone:	510-574-2128	510-574-2051
E-Mail:	ipreece@fremont.gov	sshensif@fremont.gov

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**Executive Summary:** The purpose of this report is to recommend that the City Council authorize the City Manager or his designee to execute a nine-month renewal agreement, in the amount of \$307,698, of the City's contract with the Alameda County Probation Department for delinquency prevention programs provided through the Human Services Department's Youth and Family Services division and the Fremont Family Resource Center.

**BACKGROUND:** The Alameda County Probation Department has provided funding to the City for the Youth and Family Services (YFS) and the Fremont Family Resource Center (FFRC) divisions of the Human Services Department to operate delinquency prevention and early intervention programs for at-risk youth and their families for many years. In FY 2009/10, the City received a total of \$455,850 for these services. In recent years, the Probation Department has utilized State Vehicle License Fees (VLF) appropriated by the State Legislature for Juvenile Probation and Camps Funding (JPCF) to continue these delinquency prevention service contracts. VLF revenue supporting FY 2010/11 services has fallen far below the amount needed to continue FY 2009/10 prevention service levels.

In an effort to prevent county-wide disruption of delinquency prevention programs, the County Board of Supervisors (BOS) has directed staff from the county Probation Department, Health Care Services Agency and Social Services Agency to work with the community based programs to identify alternative funding sources and redesign the delinquency prevention service system for optimal future sustainability.

The BOS also approved funding to significantly fill the FY 2010/11 VLF funding gap. This included approving a total of \$421,661 through the end of FY 2010/11 for the City's delinquency prevention and intervention programs. The BOS's approvals included an initial approval of \$113,963 to support a 3-month (July 1, 2010 – September 30, 2010) contract extension based on the City's FY 2009/10 contract amount. On July 27, 2010 the City Council authorized the City Manager to execute this FY 2009/10 contract extension. The BOS has also approved an additional \$307,698 to renew the City's contract for the remaining nine months (October 1, 2010 – June 30, 2011) of FY 2010/11, with a reduction of 10% per month. The total FY 2010/11 funding amount of \$421,661 represents a \$34,189 (7.5%) reduction in funding. This \$307,698 contract renewal also requires City Council authorization.

**DISCUSSION/ANALYSIS:** Through the \$307,698 FY 2010/11 nine-month contract with Alameda County Probation, YFS and FFRC will provide the following programs:

**Youth Service Center:** The Youth Service Center provides family crisis intervention, follow-up counseling, and support services to divert status offenders and at-risk youth from the traditional juvenile justice system whenever possible; and YFS provides the same services to youth who are on probation as a way to reduce recidivism. The Youth Service Center program serves youth from Fremont and Newark.

**Case Management Services:** This program provides help for at-risk youth and their families in locating and utilizing community resources and assistance;

**Truancy Intervention Program and Delinquency Diversion:** This is a joint program between Human Services, the Police Department, and FUSD to provide early intervention with students who are truant, have committed first-time misdemeanors, or exhibit behavioral problems. This program also includes funding for bilingual, bicultural outreach workers employed by Healthy Start under contract with the City to work at the FRC, acquainting families with resources available at the FRC and elsewhere in the community.

**FISCAL IMPACT:** In anticipation of continued county funding, the City Council appropriated sufficient funds in the FY 2010/11 adopted budget to cover this contract. The Human Services Department will adjust operations to manage the funding reduction of \$34,189.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or designee to execute a contract totaling \$307,698 with the Alameda County Probation Department to provide delinquency prevention and early intervention programs for at-risk youth and families in Fremont and Newark.

**\*2.8 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT DESIGN AGREEMENT AMENDMENT**

**Approval of the Seventh Amendment to the Professional Services Agreement with URS Corporation for Additional Design Services During Construction for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project**

**Contact Person:**

Name:	Afshin Abtahi	Jim Pierson
Title:	Project Manager	Director
Dept.:	Transportation and Operations	Transportation and Operations
Phone:	510-494-4724	510-494-4722
E-Mail:	aabtahi@fremont.gov	jpierson@fremont.gov

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**Executive Summary:** The purpose of this report is to request that the City Council authorize the City Manager or his designee to approve Amendment No. 7 to the Professional Services Agreement with URS Corporation (formerly Washington Group International, Inc., and Washington Infrastructure Services, Inc.), the designer of Washington Boulevard/Paseo Padre Parkway Grade Separation Project, to prepare as-built drawings for the Project. The amount of this contract amendment is not to exceed \$20,000; \$10,000 will be provided to URS Corporation based on their estimated cost to prepare the as-built drawings. The remaining \$10,000 would be authorized by the City Manager or his designee for any additional design-related services required to close the full Grade Separation Project.

**BACKGROUND:** A contract for final design services with Washington Group International, Inc. (formerly Washington Infrastructure Services, Inc., now URS Corporation) for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project was approved by the City Council on May 1, 2001. Six amendments to the agreement were approved by the Council over the next seven years with a combined total contract value not to exceed \$9,019,009. The scope of URS's work included design services during construction to address any design-related requirements or new design issues that arise during the bidding and construction phases. The current URS budget for design services during construction is \$1,121,000.

**DISCUSSION/ANALYSIS:** Design services during construction include all services required to assist the City during the advertisement, bidding, and award of the construction contract and during the actual construction. The scope includes preparing graphics, attending pre-bid conferences, preparing addendums, responding to bidder inquiries, reviewing and approving contractor submittals, responding to requests for information regarding the plans and specifications during construction to ensure that the project construction is consistent with the designer's intent, preparing all documents necessary to close out all permits at the completion of construction, and preparing the "as-built" plans for the City's records.

URS was able to complete all of the design services during construction within their existing budget with the exception of the as-built drawings. The main reason URS exhausted their design services budget prior to completing the as-built plans was due to the changes made to landscaping and irrigation plans and additional effort to inspect the landscaping after installation.

The red line drawings showing the changes to contract plans during construction have been provided to URS for review so they can prepare an accurate estimate of their cost to prepare the as-built drawings. URS has determined that it will cost \$10,000 for them to prepare the as-built drawings. Staff has reviewed the estimate and believes the estimate is reasonable. Staff is also asking for an additional \$10,000 authorization to be approved by the City Manager or his designee for additional design services if required to close out the full Grade Separation Project.

The new not to exceed contract value including this Amendment No. 7, assuming the additional \$10,000 is authorized, will be \$9,039,009. With Amendment No. 7, and the additional \$10,000 authorization (if approved), the new budget for design services during construction will now become \$1,141,000. This revised amount continues to be less than 2% of the total Grade Separation construction cost, which is the percentage normally used to determine an appropriate budget for design services during construction.

**FISCAL IMPACT:** All costs would be charged to the Grade Separation Project, PWC 8156. Sufficient funding is available in the project budget for this amendment.

**ENVIRONMENTAL REVIEW:** Not applicable

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or his designee to execute Amendment No. 7 to the Washington Boulevard/Paseo Padre Parkway Grade Separation Project Professional Services Agreement with URS Corporation in an amount not to exceed \$10,000 and further authorize the City Manager or his designee to increase this amount up to \$10,000 if additional services are required.

**5.1 JAI PROPERTY CONVERSION APPEAL – 4004 MATTOS DRIVE**  
**Continuation of a Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Decision to Deny a Conditional Use Permit to Allow the Conversion of an Existing Residential Structure to a Commercial Structure in the Administrative Commercial (C-O) Zoning District (PLN2008-00223) (Continued from September 14, 2010)**

**Contact Person:**

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**Executive Summary:** The applicants are appealing the Planning Commission’s July 15, 2010 denial of a conditional use permit to convert an existing residential structure to a commercial facility in the Administrative Office (C-O) zoning district. Although the applicant’s intended commercial use is permitted without a use permit in the zoning district, Fremont Municipal Code Section 8-2903(b) requires approval of conditional use permit for the conversion of the structure. The Code requires this process in order to facilitate Site Plan and Architectural Review of the physical changes required to use the building and site as a commercial facility.

The conditional use permit requirement for the conversion is an anomaly in the current zoning code. The provision relates back to a period in time when the conditional use permit process was the mechanism for site plan and architectural review. Thus, unlike most contemporary conditional use permit applications in which the focus of the review is the appropriateness of the use at the particular site, this conditional use permit requirement was intended to be narrower and more focused on the site design. This type of review process is now typically performed at a staff level for most projects. Applications for this type of conditional use permit are rare as there are relatively few existing residential properties that are continuing to convert to commercial facilities.

The applicant is expecting to use the property as a commercial preschool and daycare facility, a permitted use in the C-O district. In other districts, such as C-T Thoroughfare Commercial, a daycare use requires a conditional use permit which is subject to the more familiar use-focused review process. As previously stated, a conditional use permit is not required for the preschool and daycare use. The distinction between a review of the proposed physical conversion of the structure and site to a commercial facility and the review of the future use as a daycare was not initially identified by staff and led to confusion in how the project was represented.

The Planning Commission denied the project on the grounds that it could not make all of the findings required by Fremont Municipal Code (FMC) Section 8-22509 to approve a conditional use permit. However, the proposed conversion is consistent with the applicable development standards of the C-O zoning district with the exception of a minor FAR deviation, and as such, staff recommends that Council grant the appeal and approve the project based on the findings and subject to the conditions contained in Exhibit “B”, attached.

**BACKGROUND:** The subject building was originally built as a residential triplex in 1968, and has served that purpose to the present. In 1983 the General Plan land use designation for the property was changed from Medium Density Residential to Office Commercial and the parcel was rezoned to C-O Administrative Office, at which time the use became a legal non-conforming residential use and structure in a commercial zone.

The applicants purchased the property in September 2007 and applied for a conditional use permit to convert the building into a commercial property. As it was originally proposed, the project required approval of a parking variance to allow a reduced number of on-site parking spaces. On January 28, 2010, the Planning Commission voted 5-0 (with two commissioners recusing) to deny the conditional use permit, finding the proposed parking insufficient.

The applicant redesigned the project and submitted a scaled-down proposal in order to comply with the on-site parking and setback requirements, and other applicable development standards of the C-O zone. The Planning Commission considered the new proposal on July 15, 2010 and again voted to deny the item by a vote of 3-1 (with two commissioners recusing and one vacant seat). At this hearing, Commission expressed concern about parking issues and vehicular and pedestrian safety, and ultimately decided it could not make all of the findings required for the approval of the conditional use permit.

#### **DISCUSSION/ANALYSIS:**

*Project Description:* The applicant is proposing to convert an existing legal nonconforming residential structure and use into a conforming commercial property. The intended commercial use is a preschool and daycare facility, a permitted use within the C-O (Administrative Office) zoning district. The building was originally built as a triplex with two units and a 4-car garage on the ground floor, and a third unit on the second floor. The applicant is proposing to convert the downstairs units and garage space into two classrooms and associated support rooms. The upstairs unit would be converted into administrative office space and typical office storage and support rooms for staff. The structure would be renovated to meet current accessibility and safety standards. The applicant is also proposing to enclose a portion of the side yard along Fremont Boulevard with a 6-foot tall wood fence to create more useable private open space on the lot.

A new semi-circular driveway would be constructed in front of the building as a replacement to the current single-driveway with parking in the garage. Six parking spaces would be provided on the site, five standard angled stalls in front of the building and a sixth accessible stall to the right of the building directly inside the entrance driveway. Some portions of the building and existing site landscaping would be removed to accommodate the new driveway and parking spaces.

As part of the project, the property would be re-landscaped to complement the new site layout with planting around the new driveway, parking areas and open spaces. In addition, the exterior of the building would be completely refinished with all new siding, windows, and trim to help further improve the appearance of the property. A solid wall ranging in height from 8-9 feet would be installed along the side and rear property lines to reduce noise impacts and provide greater privacy for the adjacent residential properties.

*Further Project Considerations:* The alternative to the conversion process in this zoning district is that the owner could choose to demolish the existing building and construct an entirely new commercial

structure subject to the site plan and architectural review process included as part of the building permit review. The new structure could be designed to accommodate a particular permitted use, whether that use was a preschool and daycare facility or a medical office or another type of professional office. Such a new use would be allowed by right and would only be required to file for a business tax license. However, demolition does not support the City's goals regarding sustainability, reuse of structures, and reduction of waste. The applicant has not proposed demolition.

*General Plan Conformance:* The General Plan land use designation for the site is Office Commercial. Currently, the site is used as a residential property and, as such, the existing triplex is a legal non-conforming use of the land and the building. The proposed conversion to a commercial facility would conform the property to the General Plan by replacing the non-conforming residential building with a conforming commercial facility.

*Zoning Ordinance Compliance:* The project site is located within the C-O (Administrative Office) zoning district. The C-O district requires Planning Commission approval of a conditional use permit for the conversion of an existing building from a residential to a non-residential use. Currently, the structure serves as a residential triplex. Because the applicant is proposing to convert the structure to a conforming commercial facility, a conditional use permit is required. The applicant is proposing to make various changes to the building and site in order to comply with the standards governing commercial development in the C-O zone, as discussed below. The proposal has a Floor Area Ratio (FAR) of 0.35; however, the maximum FAR allowed in the C-O zone is 0.30. As such, the proposed conversion of the site to commercial would create a FAR in excess of the basic standard. In order to allow the proposed FAR increase, the decision-making body must make specific findings (see below for further discussion).

*Building/Site Design:* The following table depicts how the proposed modifications to the building and site comply with the basic development standards of the C-O zoning district:

<i><b>Development Feature</b></i>	<i><b>C-O Standard</b></i>	<i><b>Proposed</b></i>	<i><b>Compliance</b></i>
<b>Building Height</b>	35 feet max.	24 feet	complies
<b>Front Setback</b>	15 feet min.	21 feet	complies
<b>Side Setbacks</b>	Street side: 15 feet; Interior side: 10 feet	Street side: 24 feet; Interior side: 31 feet	complies
<b>Rear Setback</b>	10 feet	15 feet	complies
<b>Floor Area Ratio</b>	0.30	0.35	exceeds threshold requiring a finding to approve

It is staff's opinion that the changes being proposed to the building and site will result in an appropriate conversion of a residential building to a commercial property. As can be seen from the table, the modified structure and site will either meet or exceed all minimum C-O zoning standards with the exception of the maximum Floor Area Ratio (FAR) discussed later in this report. All existing building setback lines will either be preserved or enlarged, leaving ample open space between the building and



the adjacent residential properties. Preservation of the existing structure provides an appropriate transition from the commercial Fremont Boulevard area to the residential area by reducing the overall mass of the building and retaining the existing height eleven feet below what a commercial office building is allowed to build in this zoning district. Additionally, the conversion supports City's goals encouraging renovation and reuse of structures.

*Parking:* The site would have 6 parking spaces (the exact amount needed for the particular commercial use the applicant is expecting to operate on the site) and a new circular one-way driveway capable of accommodating 3-4 queued vehicles. There is also on-street parking directly in front of the property with room for another 3 cars in the event that a large number of people arrive at the site simultaneously. The site would continue to have its primary vehicular and pedestrian access off Mattos Drive, thereby increasing the safety of traffic along the much busier thoroughfare of Fremont Boulevard.

Staff has been asked questions regarding the design size and location of parking and landscaping as indicated on the proposed site and landscaping plans. The ordinance requirement in this zoning district states, "...parking may occupy the yard adjacent to the streets to within ten feet of the property line." All parking spaces are separated from Mattos Drive by either the access driveway and landscape planter or a landscape area that is at least 11 feet from the Mattos Drive property line and at least 14 feet from the Fremont Boulevard property line. The circular driveway is separated from the Mattos Drive property line by a 6 foot wide planter that is fully landscaped with a combination of evergreen shrubs and ground cover. The six foot wide landscape area meets the yard area requirement where no other setback is required next to a public street. The front edges of the angled parking stalls are located near the front of the building, 3 feet away from the front wall of the building, and closer when the 2-foot vehicular overhang is considered. Per FMC Section 8-22009(f), if a parking stall abuts a wall, sidewalk or fence, then a wheel stop must be installed at least 30 inches (or 2 ½ feet) from the wall, sidewalk or fence to prevent the front end of a vehicle from striking it. In this case, there is a curb separating the stall from the façade of the building that is located 3 feet away from the wall. Hence, the proposal complies with the minimum setback requirement.

The Zoning Ordinance requires screening of parking and circulation areas from adjacent residential lots and the public street by a wall or berm at least 3 feet in height. FMC Section 8-22009(a)(8) allows decorative landscaping to be used for screening in lieu of a masonry wall or landscape berm, subject to certain minimum standards designed to provide for an attractive and effective buffer between the parking and circulation areas and the adjacent street. In this case, the applicant is proposing to plant ground cover and numerous evergreen shrubs between the parking and circulation areas and the two adjacent streets, many of which will grow up to and beyond 3 feet in height. No trees were required to be planted in the setbacks because staff did not want any additional trees to crowd the existing, large magnolia trees growing in the sidewalks along the two street frontages. In staff's opinion, the combination of the proposed ground cover, shrubs, and existing street trees will meet the intent of the screening requirements of Section 8-22009.

The Americans with Disabilities Act (ADA) requires that the accessible parking be located as close to the main entrance as possible. In the State of California, the California Building Code (CBC) is employed when reviewing a project for compliance with the ADA because it is legally recognized as meeting or exceeding all adopted Federal building and safety codes, including the ADA. The CBC does require accessible parking to be located as close to the entrance as possible for new construction or

teardown/rebuild projects. However, the Building Official can use discretion in cases where the strict compliance with this requirement would result in unreasonable hardship to the applicant, as is often the case when an existing building is being converted from one use to another as opposed to cases of new construction where the project can be designed from scratch. CBC Section 1129B.3 allows for this exception. In this case, the applicant would have to demolish significant portions of the building in order to be able to locate the accessible parking adjacent to the entrance, and the Building Official has determined that requiring this of the applicant would constitute an unreasonable hardship.

Conditional Use Permit Findings:

Under FMC Section 8-22509, the decision-making body must make the following findings in order to approve a conditional use permit to allow the conversion of a residential building to a commercial facility in the C-O zone:

- (a) The proposed conversion is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed conversion;
- (c) The proposed conversion and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed conversion would not have a substantial adverse economic effect on nearby uses;
- (e) The proposed conversion would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large; and
- (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval).

Discussion:

- (a) General Plan consistency: As discussed in the General Plan Conformance Analysis section above, the proposed conversion is consistent with the General Plan in that it would result in the removal and replacement of a legal non-conforming residential use with a commercial use on a property that is already designated for commercial development in the Land Use Element.
- (b) Site suitability and adequacy: The project site is suitable for the proposed conversion in that it is capable of being modified to accommodate the proposed commercial facility, while still being able to meet or exceed the minimum on-site parking requirements, setbacks, and other applicable standards of the C-O zoning district with the exception of the FAR standard. The FAR would exceed the maximum allowed FAR when the structure is converted from a residential use to a commercial facility because the size of the existing building exceeds the FAR maximum limit of 0.30 in the C-O zone, not because the building is being expanded or built from the ground up in a non-conforming manner. On the contrary, the footprint of the building is actually being reduced in size overall by 530 square feet. Finally, the property also contains ample room to accommodate

the parking facilities and open spaces needed for the expected end use of the property as a preschool and daycare facility.

- (c) Impact on vehicular, bicycle and pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services: The site will continue to have its primary vehicular and pedestrian access off Mattos Drive, thereby increasing the safety of traffic along the much busier thoroughfare of Fremont Boulevard. No existing transit, pedestrian, or bicycle facilities will be affected by the proposed conversion, and traffic impacts resulting from the conversion of the property to the expected end use have been determined through various traffic analyses conducted by traffic engineering consultants to be minimal.
- (d) Economic effect on nearby uses: The property conversion should not create a substantial adverse economic effect because the conversion process will result in physical improvements to the building and site in order to achieve compliance with building, zoning, and fire safety codes for a commercial use in immediate proximity to residential use. Only commercial businesses permitted in the C-O zoning district will be allowed to operate on the site, and this includes businesses that are either compatible with residential neighborhoods by their nature, or businesses that can be regulated or conditioned in order to be compatible with and not adversely impact neighboring residential properties.
- (e) General welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large: The applicant is proposing to convert the existing residential triplex to a commercial facility. By their nature, commercial properties will generate more traffic during the workweek than residential properties. Commercial use that could occupy the site would operate during business hours typical of office-type working environments and would draw most of their traffic from Fremont Boulevard, so there should be little impact on the adjacent residential neighborhood during evenings and weekends or from traffic generated as a result of commercial activity on the site. Noise mitigation and privacy for the neighboring properties will also be provided by means of a new 8-9 foot tall noise barrier along the side and rear property lines. For these reasons, impacts to the welfare of the surrounding area are expected to be minimal.
- (f) Compliance with Article 27 of the Zoning Ordinance: If the City Council chooses to approve the conditional use permit, then the applicant will be required to implement a number of building, fire safety, parking lot, and site upgrades in accordance with the current codes governing the proposed conversion from residential to commercial. Site plan and building permit approval for these upgrades will result in the project complying with Article 27 of the Zoning Code.

Floor Area Ratio (FAR) Increase Findings:

Under FMC Section 8-22140.5, the decision-making body must make the following findings in order to approve an increase in the maximum FAR allowed in any commercial or industrial zone:

- (1) An increase in the FAR will not be detrimental to the area streets, sewer lines and/or other public services or to the lighting, air quality, or privacy of any other properties in the vicinity of the structure.

- (2) There will be a provision in place guaranteeing the increased FAR will not be used to create a more intensive use than the use specified by the approved finding.
- (3) The proposed project would provide extraordinary benefits to the city.

*Discussion:*

The conversion to a commercial structure will result in an FAR that exceeds the standard, and staff has included a recommendation that the City Council make findings to allow the resulting FAR increase. The FAR limit in the C-O zone is 0.30. The existing structure, not including the garage, has an FAR of 0.31. The modifications to the building include removing a total of 530 square feet from the first floor and converting the garage to a commercial space. The overall footprint of the building would be reduced but the proposed facility would have an FAR of 0.35 because the garage square footage is now included in calculating the FAR. As such, the proposal would increase the existing FAR by 0.04. However, the proposed conversion would bring the site into compliance with the General Plan land use designation and zoning standards. Staff recommends the following findings to allow the FAR increase:

- (1) The proposed FAR increase would not be detrimental to the area streets, sewer lines, or other public services or to the lighting, air quality, or privacy of any other properties in the vicinity of the structure in that the overall mass of the existing building is being reduced. The modifications to the building include removing a total of 530 square feet from the first floor and repurposing the existing garage to a commercial space. The building size would be reduced and existing setbacks will be maintained or enlarged. There will not be any height increases to the structures.
- (2) There will be a provision in place guaranteeing the increased FAR will not be used to create a more intensive use than the use specified by the approved finding in that only six (6) parking spaces will be provided on the site, meaning that the only types of commercial uses that will be permitted to occupy the property will be those that only require six or fewer spaces unless the balance of needed parking can be provided off-site in conformance with the parking ordinance; and
- (3) The proposed project will provide extraordinary benefit to the City by bringing a property into compliance with the current zoning and General Plan land use designations more than 25 years after the property was re-designated from residential to commercial, and allow for the efficient reuse of the existing structure without requiring a full demolition and reconstruction in order to bring the land use of the site into conformance with current zoning standards.

*Neighborhood Comments:* Staff received a number of letters from neighbors who oppose the application (see Informational Items #3 and #5). In addition, a large number of neighbors attended both Planning Commission meetings to speak in opposition to the proposal. The vast majority of neighbors expressed concerns primarily with the impacts they believe the proposed commercial use will have on traffic volumes and safety at the intersection of Fremont Boulevard and Mattos Drive. The most commonly shared beliefs are that the additional trips generated by the proposed use of the property as a preschool and daycare facility will significantly increase delays at the intersection of Mattos Drive and Fremont Boulevard during the morning rush hour when parents are dropping their children off at nearby Centerville Junior High and Washington High schools. The neighbors further believe that there is

insufficient parking provided on site which will result in parents parking along Mattos and blocking traffic in the mornings and afternoons while waiting to drop off and pick up their children.

Many of the concerns voiced by the public about the project stem from the applicant's proposed use of the property after the conversion as a preschool and daycare. Because the applicant's proposed commercial use is permitted as of right in the zone, the Council may not deny or condition the conditional use permit based on concerns associated with the proposed preschool and day care use. The Council should instead focus its review on how the structure and site are being converted for commercial use generally.

Staff received a memorandum from the Committee to Preserve Glenmoor (see Informational Item #10) which included several questions pertaining to a perceived lack of compliance with various zoning standards, particularly the outdoor play area, parking and landscape details, and the FAR. The following paragraph responds to one of those questions, while others are responded to elsewhere in the body of the report.

FMC Section 8-2906(a) provides, with regard to the C-O District, that "[a]ll uses shall be conducted wholly within a completely enclosed building except for off-street parking and loading facilities." With regard to the applicant's proposed use of the property after the conversion, staff has been asked how the outdoor play area may be approved if uses are to be conducted inside a building. Although, as previously discussed, the applicant's proposed use of the site after conversion is not the subject of the applicant before the City Council, staff believes a brief response is appropriate.

The C-O zone allows a variety of uses that are considered the primary use of the property. The FMC section stating all uses are to be conducted wholly within a completed enclosed building is applicable to the primary use of the site and meant to ensure such a use is conducted in a building that meets appropriate building and safety codes. FMC Section 8-2902(a)(2), recognizes that there may be some portion of a primary use that is typically a part of that use but different from it in some way. This section specifically allows "Other accessory uses and buildings customarily appurtenant to a permitted use." As such, it allows such outdoor uses as outdoor seating for a restaurant, outdoor patios or recreational facilities for employees of a business, and outdoor play areas as required by State law for schools or daycare facilities.

*Planning Commission Action:* On July 15, 2010, the Planning Commission considered the item in a public hearing and voted 3-1 (with two commissioners recusing and one seat vacant) to deny the application. A large number of neighbors expressed concerns that the proposed use would have a significant adverse impact on traffic circulation in the neighborhood and result in unsafe traffic conditions for children, parents and residents living in or travelling through the area. See Informational Item #6 for the minutes from this meeting. In summary, the Commission had concerns about safety and parking and ultimately decided that it could not make all of the findings required in order to approve the application.

*Appeal:* The applicants appealed the Planning Commission's decision on July 20, 2010, and are asking that the City Council reverse the decision and approve the application. In their appeal, the applicants argue that the Commission's denial was based solely on concerns about the operational impacts the proposed use could have on the neighborhood, and that this was not under the Commission's purview

since the use is permitted by right. The appeal states the Commission should only have focused on the site's ability to accommodate the commercial facility and comply with the applicable zoning standards, not on the potential impacts a preschool and day care facility could have on the surrounding neighborhood.

Staff recognizes the use of the CUP application as the process for site plan and architectural review is awkward and may confuse the issues of what is exactly subject to review and entitlement. A different process for building conversions may be appropriate in the future subject to a zoning text amendment.

Because the proposed conversion would comply with all applicable zoning standards, and because in staff's opinion all of the findings needed in order to approve a conditional use permit can be made in this case, staff recommends that the Council reverse the Commission's decision and approve the application. If the Council decides to grant the appeal, then it should approve Exhibit "A" based on the findings and subject to conditions contained in Exhibit "B".

If the Council decides to deny the conditional use permit application or the requested FAR increase, then the Council should identify the finding(s) that it is unable to make.

**Impact Fees:** If approved, the proposed change in use of the building from a residential triplex to a commercial use (in this case, a day care facility) will result in the payment of additional Citywide Development Impact Fees, including fees for traffic facilities, capital facilities, and fire protection services. The applicant would be credited for the three residential units that previously occupied the building which will result in not having to pay any capital facility or fire protection impact fees. But he would be required to pay the additional traffic impact fees that would be generated by the conversion of the building into a commercial use.

**FISCAL IMPACT:** Not applicable.

**ENVIRONMENTAL REVIEW:** The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15303 which exempts projects involving the conversion of an existing facility from one land use to another when the new use is consistent with the current zoning and General Plan land use designation of the site.

**PUBLIC NOTICE AND COMMENT:** Public hearing notification is required for the appeal. A total of 859 notices were mailed to the owners and occupants of all the properties located within 1,000 feet of the project site. The notices were mailed out by the City Clerk's Office on September 3, 2010 and October 29, 2010. Public Hearing Notices were also published in *The Tri-City Voice* on August 31, 2010 and October 26, 2010.

**ENCLOSURES:**

- [Exhibit "A" - Project Plans \(Site Plan, Floor Plans, Building Elevations and Landscape Plan\)](#)
- [Exhibit "B" - Recommended Findings and Conditions of Approval](#)
- [Informational #1 - Operations Statement prepared by Applicant](#)
- [Informational #2 - Pick-up/Drop-off Protocols for Parents prepared by Applicant](#)
- [Informational #3 - E-mails of opposition from various citizens \(5 e-mails, 8 total pages\)](#)
- [Informational #4 - Letter of support from various childcare organizations \(2 letters, 3 total pages\)](#)

- [Informational #5 - Request for additional conditions of approval from neighbor](#)
- [Informational #6 - Staff Response to Request for additional conditions \(Item #5\)](#)
- [Informational #7 - Minutes from July 15, 2010 Planning Commission hearing](#)
- [Informational #8 - Minutes from January 28, 2010 Planning Commission hearing](#)
- [Informational #9 - Appeal filed by Applicant on July 20, 2010](#)
- [Informational #10 - Summary of opposition from Committee to Preserve Glenmoor](#)
- [Informational #11 - Project Summary Data](#)
- [Informational #12 - E-mail from Applicant's consultant dated September 7, 2010](#)

**RECOMMENDATION:**

1. Hold public hearing;
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15303, Conversions of Minor Structures;
3. Find that the project is in conformance with the relevant provisions contained in the City of Fremont General Plan. These provisions include the designations, goals, objectives and policies set forth in the Land Use Element of the General Plan as enumerated within the staff report; and
4. Reverse the Planning Commission's decision and approve the project as shown in Exhibit "A", based on the findings and subject to the conditions contained in Exhibit "B".

## **6.1 Report Out from Closed Session of Any Final Action**



**8.1 Council Referrals – None.**

**8.2 Oral Reports on Meetings and Events**



## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC .....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF .....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<b><i>Date</i></b>	<b><i>Time</i></b>	<b><i>Meeting Type</i></b>	<b><i>Location</i></b>	<b><i>Cable Channel 27</i></b>
November 16, 2010	6:00 p.m.	Work Session	Council Chambers	Live
November 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 30, 2010 (5 <sup>th</sup> Tuesday)		No City Council Meeting		
December 7, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 14, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 15, 2010 – January 3, 2011		Council Recess		
January 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 18, 2011	TBD	Work Session	Council Chambers	Live
January 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 15, 2011	TBD	Work Session	Council Chambers	Live
February 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 15, 2011	TBD	Work Session	Council Chambers	Live
March 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live